THE EXTRATERRITORIAL FORCE OF PERSONAL STATUTES.

The common law is, in the main, a territorial law—that is, it is usually concerned with persons or things within a definite physical area and, under most circumstances, does not purport to control the acts or conduct of persons outside the territorial jurisdiction.

The continental law of the early middle ages might perhaps be termed a personal law in that it sought to maintain a certain control over the subject, even though he was within the territorial jurisdiction of another state, but since the formation of the modern European states it is hardly possible to say that this concept has continued, although efforts have been made by a group of Italian publicists to revive it as a working principle. At most, this old idea of a law which was a law of the people and not of the land does no more than "color the modern civil law of Europe"[1] and both civil and common laws may now therefore be said to recognize, as a starting point, the territorial nature of law, although both have extended their laws to affect persons, under certain circumstances, outside their territorial jurisdiction. If the idea of a statute personal, therefore, is referred to as from the civil law, it should be understood that the writer is speaking of the civil law as it once existed rather than as it exists today and merely to use a convenient term in contrasting the idea of a personal law with a law depending on territoriality.

It is obvious that it would be impossible to adopt the theory of a personal law to its full and logical extent, for it would necessarily have to be qualified by so many exceptions and limitations, that the principle itself would lose most of its authority.[2]

On the other hand, a law strictly territorial would be almost as unworkable and it is but natural that the civil idea and the common law idea should have given away to each other until today it is possible to say that both are at once territorial and extraterritorial.

The reason for an extension of the extraterritorial effect of law in the United States is obvious—a state is loath to feel that it

[1]Beale, Summary Confl. Laws § 7. Free use has been made of Professor Beale's excellent Summary.

[2]Ware, *D. J.*, in Polydore *v.* Prince (1837) 1 Ware *402, Fed. Cas. 11,257.

has lost all control whatever over its subjects merely because they are temporarily beyond its boundary; that by stepping across an imaginary line or by a five-minute ferry trip they can with impunity set at naught prohibitions in its laws against marrying, inheriting or contracting. As a matter of fact, most jurisdictions probably would be willing to adopt the mediaeval civil law concept and to have certain of their own laws treated as "statutes personal," were it not for the fact that they would be called upon to recognize the converse of the proposition and concede the extraterritorial effect of the laws of sister states within their own borders, and, like the continental courts, refrain from claiming jurisdiction over non-residents in such an extensive way as does the common law. In some instances, states have taken positions clearly illogical—New York and several other states, for example, will grant a divorce where there has been service upon the defendant by publication only[3] but refuse to recognize divorces granted by other states under similar circumstances.[4]

The purpose of this article is to discuss some of the English and American cases wherein the theory of a statute personal has been more or less touched upon, most of these cases quite naturally dealing with questions of personal status, for it is where the artificial condition impressed on an individual, known as a status, comes in conflict with the law of the place where he is seeking to contract, to marry, to receive property, etc., that we must determine what extraterritorial effect may be given a particular law.

The subject is a broad one and it will be possible to mention but a few of the classes of cases involving personal status.

A status that might be described rather broadly and somewhat inaccurately as the status of matrimonial incapacity would include all those cases where persons are incapable of marrying by the law of their domicil not because of natural reasons but for reasons of public policy. Under this head would be included statutes forbidding the remarriage of the guilty party in cases of divorce, statutes forbidding the marriage of blacks and whites, statutes forbidding polygamous marriages and statutes forbidding marriage because of the nearness of relationship of the contracting parties. From the standpoint of the conflict of laws it is possible to discuss these various cases together and it is interesting to do

[3]Hunt *v.* Hunt (1878) 72 N. Y. 217, 239.

[4]Haddock *v.* Haddock (1905) 201 U. S. 562, 624.

so because they will show what irreconcilable views are held on both sides of the Atlantic when it is attempted to treat the matter of the recognition, or withholding of recognition, of a status from any other viewpoint than that of a question of public policy.

As to prohibitions on the right to remarry after divorce, most states follow New York, the law of which was settled by the case of *Van Voorhis* v. *Brintnall,*[5] holding that a second marriage solemnized in a neighboring state between residents of New York, whose sole reason for going outside the state was to evade a prohibition of remarriage on one of the contracting parties, was nevertheless a valid marriage and the children thereof should be recognized as legitimate. The court took occasion to state, by way of dictum, however, that every state can regulate the status of its citizens beyond its own borders but that the intent so to do must be expressed in the clearest and most unmistakeable terms. There is not lacking a considerable body of authority contrary to the decision in *Van Voorhis* v. *Brintnall,* as the decision in *Stull's Estate*[6] and the cases cited therein, indicate, but, on the whole, American courts have refused to recognize such an artificial incapacity as anything but penal in its nature and, indeed, have not considered it as raising a question of status at all.

Miscegenation statutes, however, show almost all the states that have them a unit—and, from the standpoint of the common law, a unit on the wrong side, for, following the case of *Brook* v. *Brook,* referred to hereafter, they hold that the law of the domicil prevails and prevents the white from marrying the black, irrespective of where the ceremony is performed, and an earlier view expressed in a Massachusetts case[7] is repudiated.[8] Capacity is made to depend on the domicil, however, not so much because of any belief in the superiority of the doctrine of the statute personal as because of the intense abhorrence in which such marriages are held in the South, to which section of the country this class of statutes is practically confined.

There would have been considerably less discussion of the right to marry as a question of status, were it not for the case of *Brook* v. *Brook.*[9] A widower and the sister of his deceased wife, both

[5](1881) 86 N. Y. 18.

[6](1897) 183 Pa. St. 625.

[7]Medway *v.* Needham (1819) 16 Mass. 157.

[8]Kinney *v.* Commonwealth (Va. 1878) 30 Grat. 858.

[9](1861) 9 H. L. Ca. 192, 206.

domiciled in England, were married while on a temporary visit to Denmark. This marriage was valid by the law of Denmark but would not have been valid, at that time, if celebrated in England because of the "deceased wife's sister" act, now repealed. The House of Lords held the marriage void and in an extraordinary decision seemed to go farther than the continental courts. It was asserted flatly that

"while the forms of entering into the contract of marriage are to be regulated by the *lex loci contractus,* the law of the country in which it is celebrated, the essentials of the contract depend upon the *lex domicilii,* the law of the country in which the parties are domiciled at the time of the marriage, and in which the matrimonial residence is contemplated."

The Lord Chancellor admitted that if both persons had been Danish subjects, such marriage might have been valid, even in England. Much was said of marriages contrary to "God's law", but the real basis of that decision must be, in the light of a later decision,[10] that the law of the domicil must govern. This seems the most important case in the common law in which law has been conceived of as a personal relation between sovereign and subject, affecting the status of the latter wherever he may be.

It is true that prior to *Brook* v. *Brook,* the House of Lords had held in the *Sussex Peerage Case,*[11] that the statute which forbade the marriage of descendants of George II without the royal consent created an incapacity attaching to the person which a descendant carried with him wherever he went; but a statute so clearly embodying a distinctive public policy and applicable only in such an exceptional class of cases can hardly be considered a very valuable precedent, particularly since the Lord Chancellor stated in *Brook* v. *Brook* that he did not rely on the *Sussex Peerage Case* as a precedent. As to the reasoning by which the result in *Brook* v. *Brook* was reached, there perhaps is no more effective and utterly destructive criticism in American law reports than the opinion of Mr. Justice Gray in *Commonwealth* v. *Lane,*[12] nor in American law treatises than that of Mr. Bishop in his work on Marriage, Divorce and Separation.[13] But, right or wrong, the case stands for the civil idea of law as creating a personal status, and

[10]Bozzelli's Settlement L. R. [1902] 1 Ch. 751.

[11](1844) 11 C. & F. 85.

[12](1873) 113 Mass. 458.

[13]Vol. 1. § 872 *et seq.*

it is to be regretted that the court did not discuss at greater length the theory by which it was proposed to attach to an English subject a certain legal personality that would be a part of him, wherever he might go. The lack of such discussion is one of the difficulties with adducing any general result from these cases, but perhaps this is due to that confusion and contradiction already alluded to and to the inevitable conflict of a "statute personal" with a "law of the land". This much can be said—that where it has been denied that the *lex loci celebrationis* determines the validity of a marriage, it has been because the marriage in question was within one of two exceptional classes of cases—either (1) it was regarded as polygamous and incestuous according to the general view of Christendom or (2) the lawmaking power of the forum had expressly declared that such a marriage should not be allowed any validity.[14]

That there is no disposition in the English courts to extend the doctrine is shown by a late case, *Swifte* v. *Attorney-General*.[15] Here an attempt to apply the principle of *Brook* v. *Brook* to a foreign marriage between an Irishman and a foreigner, which, by a British statute, would have been void on account of a difference in religion if celebrated in Ireland, met with no encouragement from the House of Lords; and while the decision rested on the interpretation of a statute as intraterritorial and not relating to capacity, counsel was correct in asserting that there was nothing in the "deceased wife's sister" act to make it extraterritorial which was not found in the act under discussion.

Those courts which have attempted to follow *Brook* v. *Brook* seem to have made themselves needless trouble in seeking to find a legal foundation under the common law for a result more easily reached in another manner. It has never been denied that every jurisdiction can decide for itself what acts and modes of living are to be prohibited within its borders as against public policy, but in so doing it is not necessary to overthrow the doctrine of the law of the land and frankly to declare that other countries or other states cannot do that which every state unequivocally asserts it can do for itself—that is, give a legal significance to any act done on its own territory that, within its own territory, is absolutely binding on everyone. These decisions go too far and seek to affect a legal status itself when, as a matter of fact, the same

[14] 57 L. R. A. 161, note.

[15] L. R. [1912] A. C. 276.

result would be reached, were they to be confined to the regulation of the incidents of this status, as has been done in other classes of cases. To give a concrete illustration—the House of Lords, in *Brook* v. *Brook*, discussed a marriage taking place in Denmark as if they had authority to make such a marriage an absolute nullity, but they could have reached the desired result, even had they admitted that the *lex loci celebrationis* must determine the validity of the ceremony, simply by holding that, although the status of husband and wife undoubtedly existed, there were certain incidents of this status which the courts of England, on the grounds of public policy, would refuse to recognize. This would be no novel doctrine in England or in this country. When Lord Mansfield held, in *Somerset* v. *Stewart*,[16] that an allegation of the status of slavery was no return to a writ of habeas corpus in England, he did not deny that Somerset was a slave, but simply decided that the incidents of such a status could not be enforced in England. The doctrine of *Brook* v. *Brook* proves too much—if followed, logically, it means that when this English-domiciled couple returned to England, *ipso facto* the marriage relation was dissolved and even if they should subsequently leave England and go, we will say, to the United States, it would not revive. But it is hardly to be believed the English case meant this and certainly the American cases do not go that far, for in one of the miscegenation cases,[17] it was expressly stated that the parties could maintain the relation of husband and wife by changing their domicil to a State or country where their marriage was valid. This distinction between recognizing a status and enforcing its incidents is pointed out with admirable clearness by Judge Ware in *Polydore* v. *Prince*[18] and a number of apt illustrations cited—

"If a Turkish or Hindoo husband were travelling in this country with his wife, or temporarily resident here, we should, without hesitation, acknowledge the relation of husband and wife between them; but the legal pre-eminence of the husband as to acts done here, would be admitted only to the extent that the marital rights are recognized by our laws, and not as they are recognized by the law of his domicil."

There are numerous cases in the reports which illustrate how a jurisdiction may recognize the existence of a status and yet decline to give effect to some, if not all, of its incidents. Thus

[16](1772) 20 How. St. Tr. 1.
[17]Kinney *v.* Commonwealth *supra*.
[18](1837) 1 Ware *402, *409.

because a marriage between uncle and niece was valid in Russia where it took place, it does not follow that the couple may live together as man and wife in Pennsylvania.[19]

On the other hand, in *Sutton* v. *Warren,*[20] a marriage celebrated in England between aunt and nephew was recognized in Massachusetts to the extent of permitting the husband to sue on a note given to his wife, although such a marriage was absolutely contrary to the law of Massachusetts. But it does not follow that Massachusetts would have permitted this couple to live together as husband and wife—in other words, the marriage was recognized because valid by the *lex loci contractus* and one of its incidents was also recognized, although other of its incidents would undoubtedly have been denied. A very recent Massachusetts case[21] affords an interesting illustration of the same doctrine. By the law of the domicil of both parties (Turkey) when a wife renounces Christianity and embraces Mohammedanism and marries a Mohammedan, her previous marriage is, *ipso facto,* dissolved. It was held that that law would be given force in Massachusetts and the husband was competent to contract another marriage in that state, the law of Turkey not being "so revolting to the moral sense of a Christian nation as to prevent recognition and enforcement by its courts." The dictum of the learned judge that "it is possible that some law of a heathen country would be so abhorrent to civilization that it would not be recognized, even as establishing the status of its subjects" probably refers to the recognition of the incidents of that status rather than to the status itself, for elsewhere it is stated that the creation of a status is a right inherent in the law of the domicil.

Similarly, Indian marriages and divorces, proper according to tribal custom, have been recognized generally by American courts, although perhaps the marriage was merely living together and the divorce, merely an abandonment of the wife by the husband.[22]

Dunham v. *Dunham*[23] sums up the prevailing common law doctrine aptly:—

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[19]United States *v.* Rodgers (1901) 109 Fed. 886; see also State *v.* Brown (1890) 47 Oh. St. 102.

[20](Mass. 1845) 10 Metc. 451.

[21]Kapigian *v.* Der Minassian (Mass. 1912) 99 N. E. 264.

[22]See Wall *v.* Williamson (1845) 8 Ala. 48, and other cases cited in Kapigian *v.* Der Minassian *supra.*

[23](1894) 57 Ill. App. 475, 497.

"* * * marriage is a state which people can enter into only in accordance with the *lex loci contractus;* but whether in a new sovereignty, to which they may remove, they will be recognized as husband and wife, depends upon the law of such sovereignty."

Coverture is a status the discussion of which opens the field to a discussion of the much larger subject of married women's property rights with which this article is not concerned. It should be kept in mind, in discussing this status, that we are dealing only with laws that operate directly and primarily upon the person and not laws that operate directly and primarily upon property. The *lex rei sitae* always determines the capacity to make contracts relating to real estate, irrespective of the status of the parties concerned[24] and this may be the rule even in the case of personal property if there is a distinctive public policy to that effect.[25] Likewise, here, as in all cases where status comes in question, the settled public policy of the *lex fori* may be so interpreted as to forbid the enforcement of the incidents of the status of married women as created elsewhere and, further, it is difficult to find cases that discuss the matter of a personal status of coverture from the standpoint of our inquiry because there are so frequently several laws involved beside the *lex domicilii*—in some cases, there may be the *lex loci contractus,* the *lex rei sitae,* the *lex solutionis* and the *lex fori*—and it is not always an easy matter to determine upon which the court lays most stress.

But with these qualifications in mind, how far is the status of a married woman, as limited and defined by the law of her domicil, given effect in other jurisdictions?

The early civil law doctrine will be found to have made little headway. If there is a difference between capacity as fixed by the law of the domicil and capacity as fixed by the law of the place of contracting, and neither law is that of the forum, the law of the place of contracting has usually prevailed and there has been no reference to a personal law. Thus if the wife was incapable by the *lex domicilii* but capable by the *lex loci contractus,* her contract is valid.[26] But suppose the domicil is at the forum? In one case,[27] the court did not hesitate to hold the converse of *Bowles* v. *Field, viz.,* that the contract of a woman capable by the law of the domicil but incapable by the law of the place of contracting

[24]Walling *v.* Christian & Craft Grocery Co. (1899) 41 Fla. 479.
[25]Farmers' & Mechanics' Nat. Bank *v.* Loftus (1890) 133 Pa. St. 97.
[26]Bowles *v.* Field (1897) 78 Fed. 742; *s: c.* 83 Fed. 886.
[27]Nichols & S. Co. *v.* Marshall (1899) 108 Iowa 518.

was invalid, but this case stands alone and where the remedy is sought at the domicil, there is a strong tendency on the part of some courts to find a way of invoking the law of the domicil, which is usually done by resting the decision on grounds of public policy.[28] In fact, *Armstrong* v. *Best* expressly repudiates the statute personal and by way of dictum states that were the plaintiff suing in the state where she made the contract, the law of that state would prevail and the contract would be valid.

The only progress that the early civil law doctrine has made in this country, so far as coverture is concerned, seems to be in the southern states. There are a number of clear-cut decisions in Louisiana and in two or three neighboring jurisdictions, several cases in the District of Columbia and dicta in one or two northern states.[29] In England, there are two early cases.[30]

In general, therefore, it may be said that in this branch of the subject the theory of a statute personal remains chiefly a theory both in this country and England.

The status of infancy, if infancy may be considered a status, comes in question, for our purposes, perhaps oftenest in three classes of cases—capacity to contract generally, capacity to marry and capacity to receive devises or legacies.

With respect to capacity to contract generally, the states of this country are practically a unit in holding that the law of the domicil cannot override the *lex loci contractus*[31] and the one or two Louisiana cases to the contrary may be considered as overruled by *Saul* v. *His Creditors*.[32] The English law is in a most uncertain state. In *Male* v. *Roberts*,[33] Lord Eldon held that the validity of the defense of infancy must be determined by the *lex loci contractus* but in *Cooper* v. *Cooper*,[34] the House of Lords held, in the language of Lord Halsbury, *L. C.*, that "the capacity to contract is regulated by the law of the domicil," although Lord Macnaghten doubted whether the question was "finally settled" and Lord Watson speaks of it as "a fertile subject of controversy."

[28]Thompson *v.* Taylor (1900) 65 N. J. L. 107; Goldsmith *v.* Ladson (1891) 19 Wash. (D. C.) L. Rep. 738; Armstrong *v.* Best (1893) 112 N. C. 59; Milliken *v.* Pratt (1878) 125 Mass. 374, 383 (dictum) *accord.*

[29]See 57 L. R. A. 513, note, where the authorities are collected.

[30]Cosio *v.* De Bernales (1824) 1 C. & P. 266; Guépratte *v.* Young (1851) 4 De G. & S. 217.

[31]22 Cyc. 512, note 6.

[32](La. 1827) 5 Martin (N. S.) 569.

[33](1790) 3 Esp. 163.

[34](1888) L. R. 13 A. C. 88.

Until recently, there seemed to be no tendency in this country to treat the question of the power of an infant to contract a marriage as a matter for the law of his domicil and not for the law of the place of celebration, but a late decision of the Court of Appeals of New York looks the other way. In *Cunningham* v. *Cunningham*,[35] that court held that a marriage performed in another State and valid under its laws between residents of New York, one of whom was under the age of legal consent and without the knowledge of her parents, could be annulled by the courts of New York, as repugnant to the public policy and legislation of New York. But, as shown in the very clear and illuminating dissenting opinion of Werner, *J.*, this decision confuses the contract of marriage and the status of marriage and reaches the same illogical result as *Brook* v. *Brook*. The majority of the court seemed to think that the control of the contract of marriage is necessary to the control of the incidents of the status of marriage, but Judge Werner pointed out the simple distinction—that the validity of the contract is a matter for the *lex loci contractus* but the regulation of the incidents of the status for the *lex domicilii*, and that it was not at all necessary, in order to reach the desired result, for a New York court to announce such a radical doctrine as that a contract valid where made could be annulled at the instance of a New York court upon the sole ground that a similar contract if entered into in New York would be voidable.

The decision is interesting as an apparent extension of the doctrine of a statute personal, for it is certainly not to be defended on any other grounds than as such an extension.

In England, the courts seem to have started with the common law doctrine, later to have departed from it and now once more to be back at their original position. In *Simonin* v. *Mallac*,[36] it was held that where one was a minor by the law of his domicil (France) but not by the law of the place of contracting marriage (England), there was a legal and binding marriage. But then came two decisions which, although not concerned with questions of infancy, were in point, *Brook* v. *Brook*[37] and *Sottomayor* v. *De. Barros*,[38] holding that the law of the domicil determined capacity to marry. However, that peculiarly judicial characteristic

[35](1912) 206 N. Y. 341.

[36](1860) 2 Sw. & Tr. 67.

[37]*Supra.*

[38](1877) L. R. 3 P. D. 1.

of being able to see differences where there are none enabled Sir James Hannen, when *Sottomayor* v. *De Barros* came before him for another trial,[39] practically to overrule the two cases just mentioned, and a decision of the Court of Appeal in *Ogden* v. *Ogden*[40] which approved and followed Sir James Hannen's later decision in *Simonin* v. *Mallac* makes it possible to state that the English law agrees with ours in that capacity of a minor to marry depends on the law of the place of contracting marriage and not on the law of his domicil.

There have been several interesting cases in this country in which the question of the right of an infant to take property has been raised, due to a difference in the law of his domicil and the law of the situs. In *State* v. *Bunce*,[41] it appeared that the legislature of Arkansas had passed an act which purported to remove the disabilities of minority so as to permit one of its citizens to demand and receive moneys in Missouri, but the court of the latter state held that Arkansas "did not possess the power to pass a law to override and control our laws", and this case represents the decided weight of authority. There is one interesting dictum, probably the only statement to that effect in this country, that one who was of full age in one state was, under the principles of conflict of laws, of full age in all other states.[42] No English case seems to raise quite the same point. *In re Hellman's Will*,[43] held that either the law of a court administering a legacy or the law of the domicil of the legatee, whichever first gave capacity, could determine the time of payment, but what that decision really did was to pass on the right of the executor to pay a legacy with respect to his liability on a subsequent accounting—purely a matter for English law.[44]

Legitimacy is a status which, by the weight of authority, is determined by the father's domicil at the time of the child's birth.[45] There is quite general recognition of the incidents of the status as created by the law of that domicil where there is a chance for such recognition, but as respects real property every jurisdiction still

[39](1879) L. R. 5 P. D. 94.

[40]L. R. [1908] P. 46.

[41](1877) 65 Mo. 349.

[42]Woodward *v.* Woodward (1889) 87 Tenn. 644.

[43](1866) L. R. 2 Eq. 363.

[44]Beale, Summary Confl. Laws § 77.

[45]*In re* Andros (1883) 24 Ch. Div. 637.

insists on the *lex rei sitae* as the proper law by which to determine all rights of inheritance and succession. The questions raised are therefore more likely to be questions of interpretation than of status—what does the *lex rei sitae* mean by "legitimate", legitimate by the law of the domicil or legitimate by the *lex rei sitae?*

Thus in *Doe* v. *Vardill*,[46] the judges when called on for their opinion by the House of Lords, held that while the claimant of certain English real estate was legitimate by the law of Scotland, the country of his father's domicil, and that his legitimacy must be recognized in England, yet the English statute of inheritance did not intend that *class* of legitimate children to take. This decision was based on the so-called statute of Merton which not only required that a child, in order to inherit, should be legitimate, but that "he should be born in lawful wedlock as well."[47] Conversely, the law of the situs may be interpreted to include children who are not legitimate by the law of their or their father's domicil.[48] Looked at as questions of statutory interpretation, these decisions do not contravene the rule, and although *Doe v. Vardill* at first caused some confusion in this country, the law is quite generally clear that legitimacy, even in cases of real property, is a matter for the *lex domicilii* and not the *lex rei sitae*.[49] In *Scott* v. *Key*,[50] the status of a person legitimatized by special statute in Arkansas was recognized in Louisiana and he was allowed to inherit real property.

In cases involving personal property, the better opinion and the weight of authority is that the status of legitimacy is to be determined by the proper law, that is, by the law that would govern were no property rights involved. Thus in an English case,[51] it was held that the statute was broad enough to permit a child who had the status of legitimacy by the law of Holland by reason of the intermarriage of his parents after his birth to inherit as a legitimate child in England, even though an English child in similar circumstances would not be legitimate. This is an interesting decision to compare with *Doe* v. *Vardill* and has been cited by an

[46](1840) 7 C. & F. 895.

[47]Dayton *v.* Adkisson (1889) 45 N. J. Eq. 603.

[48]Moen *v.* Moen (1902) 16 S. D. 210; Hall *v.* Gabbert (1904) 213 Ill. 208.

[49]Miller *v.* Miller (1883) 91 N. Y. 315; Ross *v.* Ross (1880) 129 Mass. 243.

[50](1856) 11 La. Ann. 232.

[51]*In re* Goodman's Trusts (1881) L. R. 17 Ch. Div. 266.

English court as indicating less unwillingness in later years on the part of English courts "to admit a personal law of status and capacity dependent on domicil, and travelling with the person from country to country."[52]

The discussion of other questions of status will bring out little new and limitations of space make it possible to do no more than briefly mention a few of them.

An adjudication of insanity is not treated as creating a status but merely as the recognition of a natural fact. Hence one adjudged lunatic in one jurisdiction may sue or be sued in his own right in other jurisdictions where he has not been so adjudged.[53] The greatest effect that an adjudication of insanity in another jurisdiction can be given is to establish a *prima facie* case to be submitted to a jury.[54]

Wardship is a status which the courts of this country and of England have almost invariably treated consistently, that is, one to be created by the law of the domicil of the ward but to be recognized by other jurisdictions to the extent that public policy will permit.[55]

Incorporation is a status which can only be created by the law of the state of incorporation but which is recognized in other states, and the incidents of which are also recognized in other states to the extent that public policy will permit. The subject is too large for the purposes of this article but these few generalizations may be made—a state cannot empower a corporation to do an act within its borders which the chartering state has not empowered it to do,[56] and when the chartering state legally terminates a corporation or alters its powers, the termination or alteration must be recognized as a fact everywhere.[57] The law of the chartering state also governs the status of the stockholders, and when their liability to the corporation is contractual, not penal, it will

[52]Ogden *v.* Ogden L. R. [1908] P. 46, 58. See a learned note in 65 L. R. A. 177 on this whole subject.

[53]Weller *v.* Suggétt (N. Y. 1878) 3 Redf. Surr. 249; N. Y. Security and Trust Co. *v.* Keyser L. R. [1901] 1 Ch. 666.

[54]Matter of Perkins (N. Y. 1816) 2 Johns. Ch. 124; Herndon *v.* Vick (1898) 18 Tex. Civ. App. 583.

[55]Lamar *v.* Micou (1884) 112 U. S. 452; Nugent *v.* Vetzera (1866) L. R. 2 Eq. 704.

[56]St. Louis etc. Railroad *v.* Terre Haute etc. Railroad (1891) 145 U. S. 393.

[57]Remington *v.* Samana Bay Co. (1886) 140 Mass. 494; Canada, etc. Railroad *v.* Gebhard (1883) 109 U. S. 527.

be recognized and enforced in other jurisdictions, under the full faith and credit clause.[58]

Civil death is a status but one given no extraterritorial effect, according to the one adjudicated case in this country.[59]

Other statutory disabilities imposed on conviction of crime, such as incapacity to testify, to vote, to make a conveyance or will during confinement, etc., are limited similarly and held to be matters of a penal nature, strictly territorial in their effect.[60]

In England, it was held, before the abolition of the doctrine of attainder, corruption of blood and forfeiture, that an attainder of treason did not affect either a marriage contracted in another country or the issue thereof.[61]

Bankruptcy has been spoken of as a status[62] and it has been said that a bankrupt becomes, for many purposes, *civiliter mortuus*;[63] but it would seem as if it were a matter primarily affecting property and only incidentally affecting the person. That it is not a status is quite the unform holding in both this country and in England, and an adjudication of bankruptcy is given no extraterritorial effect, at least so far as the personal capacity of the bankrupt is concerned.[64]

There seems to be no case in this country where a court has been asked to recognize the incidents of the status of nobility, although Ware, *D. J.*, in *Polydore* v. *Prince*,[65] shows clearly enough what would be the answer—

"If a bill in equity were filed in one of our courts against an English nobleman temporarily resident here, would he be allowed to put in an answer upon his honor, and not under oath, because he was entitled to that personal privilege in the forum of his domicil? I apprehend not."

The status of foreign sovereign is clearly recognized, however, by

[58]Converse *v.* Hamilton (1911) 224 U. S. 243; Nashua Sav. Bank *v.* Anglo-American etc. Co. (1902) 189 U. S. 221.

[59]Wilson *v.* King (1894) 59 Ark. 32.

[60]Commonwealth *v.* Green (1822) 17 Mass. 515; Sims *v.* Sims (1878) 75 N. Y. 466; Logan *v.* United States (1892) 144 U. S. 263, 303; three early cases cited by Professor Wigmore, 1 Evid. § 523, being against all later authority.

[61]Kynnaird *v.* Leslie (1866) L. R. 1 C. P. 389.

[62]*Re* Pearson L. R. [1892] 2 Q. B. 263.

[63]Bank *v.* Sherman (1879) 101 U. S. 403, 406.

[64]Wharton, Confl. Laws §§ 795, 387 *et seq.*

[65](1837) 1 Ware *402, *407.

dicta[66] and in England by the case of *Mighell* v. *Sultan of Johore*,[67] where the English court refused to take jurisdiction of a case against a foreign sovereign, even though he had entered into a contract under an assumed name, as a private individual. The sovereign, of course, can waive the privilege of the status and submit to the jurisdiction of a foreign court.[68]

To what extent, then, has it been found necessary in common law jurisdictions to assert extraterritorial powers by a recognition of the statute personal? On the whole, the instances are rather surprisingly few and most of the cases mentioned could have been supported on other grounds. A few states assert the right to prohibit beyond their own borders the re-marriage of their citizens who have been the guilty parties in divorce actions; the southern states sometimes rely on the statute personal to prevent miscegenation; England has a confused case which recognizes it in an attempt to prevent marriage with a "deceased wife's sister" (a case not followed here and practically overruled there); three or four southern states speak of the statute personal in matters of coverture; one late New York case seems to rely on it to annul an infant's marriage; and most states recognize it in matters of legitimacy, incorporation and wardship.

A word as to the statute personal in continental countries. If the two great common law jurisdictions are rather confused at times in their statement of the grounds on which they can assert an extraterritorial power over their subjects, so also are the continental courts in their treatment of a statute personal. Nationality, rather than domicil, is supposed to determine questions of status and capacity. The conventions of the Hague of June 12, 1902, which were signed by and are actually in force in France, Germany, Italy and a number of other European states, uniformly look to nationality where we would look to domicil. But the doctrine of nationality has proved as difficult to apply as our courts have found the doctrine of domicil, and an examination of the many notes on the continental law relating to this subject, gathered together by Professor Lorenzen in his valuable "Cases on the Conflict of Laws," will show that the rule is almost lost sight of in the many exceptions that the continental courts are

[66] See Marshall, *C. J.*, in Schooner Exchange *v.* McFaddon (1812) 7 Cranch 116, 136.

[67] L. R. [1894] 1 Q. B. 149.

[68] Colombia *v.* Cauca Co. (1902) 190 U. S. 524.

always devising in order to circumvent their own doctrine. In the language of a distinguished civilian,[69] in referring to this subject, "one must conclude that the harmony which should exist between the laws of various countries can be obtained only through a sacrifice," and the continental courts have shown no hesitation in making a sacrifice that has led to many more distinctions and refinements than are found in the common law treatment of the same subject.

F. GRANVILLE MUNSON.

NEW YORK.

[69] A. Pillet, quoted in 2 Beale Cas. Confl. Laws, 4.